IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

In re

Case No. 00-31754

LOGIXX AUTOMATION, INC.

Debtor

LOGIXX AUTOMATION, INC.

Plaintiff

v. Adv. Proc. No. 00-3071

COMMUNITY REUSE ORGANIZATION OF EAST TENNESSEE, d/b/a CROET

Defendant

MEMORANDUM ON DEFENDANT'S MOTION TO ABSTAIN AND TO ENFORCE DISPUTE RESOLUTION CLAUSE

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RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

Before the court is the June 23, 2000 Motion Requesting the Federal Court to Abstain From Hearing This Action and Enforce the Dispute Resolution Clause of the Sublease filed by Community Reuse Organization of East Tennessee, the Defendant in this adversary proceeding initiated by the Debtor, Logixx Automation, Inc., on June 19, 2000. Additionally, on August 24, 2000, the Defendant filed a Motion to Dismiss for Lack of Subject Matter Jurisdiction.[1] The parties have filed briefs in support of their positions.

The present motion presents the court with a core proceeding. 28 U.S.C.A. § 157(b)(2)(A) (West 1993); *Beneficial Nat'l Bank USA v. Best Receptions Sys., Inc. (In re Best Receptions Sys., Inc.)*, 220 B.R. 932, 941 (Bankr. E.D. Tenn. 1998) ("The determination of whether to abstain is a core proceeding . . . .").

I

The Debtor manufactures and markets machine tools used in various manufacturing processes. It moved its business from Colorado to Roane County, Tennessee, in 1998 and filed its Voluntary Petition under Chapter 11 on April 28, 2000.

The Defendant, referred to by the acronym CROET, is a Tennessee not-for-profit corporation. Its purpose, among others, is to bring industry to facilities in Roane County that were

[1] This motion, accompanied by a Memorandum in Support of Motion to Dismiss for Lack of Subject Matter Jurisdiction, was filed by the Defendant to make clear that "defendant's motion to stay . . . was a motion to dismiss for lack of subject matter jurisdiction." The court's resolution of the June 23, 2000 abstention motion is dispositive of the subject matter jurisdiction issue.

previously operated by the Department of Energy as a gaseous diffusion plant which is now known as the East Tennessee Technology Park.[2]

CROET leases certain facilities from the Department of Energy pursuant to the terms of a Lease dated October 30, 1998. This Lease, at paragraph 27, contains the following provision regarding disputes:

> DISPUTE CLAUSE — Except as otherwise provided in this Lease, any dispute concerning a question of fact arising under this Lease which is not disposed of by agreement shall be decided by the DOE Realty Officer as identified in Condition No. 5, who shall reduce the decision to writing and mail or otherwise furnish a copy to the Lessee. The decision of the DOE Realty Officer shall be final and conclusive unless, within thirty (30) days from the date of receipt of such copy, the Lessee mails or otherwise furnishes to the DOE Realty Officer a written appeal addressed to the Secretary of the [sic] Energy. The written decision of the Secretary or his/her duly authorized representative for the determination of such appeals shall be final and conclusive unless the Lessee, within ninety (90) days, brings an action in a court of competent jurisdiction, contesting the Secretary's decision. If such an action is brought, the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of any agency action. In connection with any appeal proceeding under this condition before the DOE representative of the Secretary, the Lessee shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Lessee shall proceed diligently with its performance and in accordance with the decision of the DOE Realty Officer.

On November 6, 1998, CROET subleased space in a building within the facility to the Debtor under the terms of a written Sublease. The Sublease was drafted by CROET.[3] Appendix

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[2] Litigation between the parties in the Debtor's case has provided the court with some factual information that may not yet be of record in this adversary proceeding. The court includes these facts, which are undisputed, solely to provide an introduction to the present action.

[3] The court takes judicial notice of this fact from prior litigation between the parties. *See* FED. R. EVID. 201.

"A" to the Sublease between CROET and the Debtor is the October 30, 1998 Lease between the Department of Energy and CROET. The Sublease provides at paragraph 9:

> DOE DISPUTE CLAUSE. The Lessee acknowledges that any dispute arising under this Sublease shall be subject to the Dispute Clause, Condition No. 27, of the Lease.

On June 19, 2000, the Debtor commenced this adversary proceeding against CROET in order to pursue alleged claims for negligent misrepresentation, breach of contract, breach of the duty of good faith and fair dealing, gross negligence, and fraud in connection with the Debtor's Sublease with CROET and the parties' understanding regarding the equipment and machinery. The Defendant filed its motion asking the court to abstain from hearing this action and to compel arbitration under the Lease and Sublease on June 23, 2000.

This adversary proceeding is based on the Debtor's allegations that it decided to relocate its operations to the East Tennessee Technology Park based on assurances by CROET that it could lease essential machinery and equipment from CROET in a timely fashion; that the parties executed a Memorandum of Understanding which set forth their plan for CROET to lease the space as well as machinery and equipment to the Debtor; that the Debtor could not view the equipment when making its leasing decisions because the equipment was in a classified area of the facility; that it relied on photographs of the equipment in selecting the twenty-six pieces of equipment that it desired to lease; that eleven items of equipment were identified as contaminated with radioactive material; and that the Debtor agreed to pay part of the cost of relocating the equipment and of decontaminating it. The Debtor also alleges that it notified the Defendant continuously from the beginning of their discussions that it needed to lease the space and equipment quickly in order to

resume its production and begin filling orders from clients; that the Defendant continuously assured the Debtor that the space and equipment would be available to it shortly after it signed the Lease; that the parties signed a Sublease drafted by CROET on November 6, 1998; and that the Debtor took possession of the property on December 1, 1998, at which time there were several physical defects on the premises which rendered the premises unusable for the Debtor's purposes, created dangerous conditions, and damaged the Debtor's equipment. Finally, the Debtor alleges that the Defendant failed to deliver the equipment in a timely fashion as promised; that much of the equipment had not been delivered as of June 15, 2000; that some of the delivered equipment was contaminated; that the Debtor was unable to resume production for a substantial period of time because of CROET's failures; and that its inability to produce machinery, among other difficulties caused by CROET, have caused the Debtor devastating financial losses and the loss of customers.

II

The threshold issue in determining whether the court may compel arbitration is whether the parties have a binding agreement to arbitrate the matter. *See Dixstar, Inc. v. Chemtex Int'l, Inc. (In re First Thermal Sys., Inc.)*, 182 B.R. 510, 512 (Bankr. E.D. Tenn. 1995). Because arbitration is a contractual matter, "'a party cannot be compelled to arbitrate that which it has not agreed to arbitrate.'" *Id.* (quoting *Amalgamated Clothing Workers of Am., AFL-CIO v. Ironall Factories Co.*, 386 F.2d 586, 590 (6th Cir. 1967)). When determining whether parties have agreed to arbitrate a particular dispute, courts apply state law principles governing contracts.[4] *See*

[4] State contract law is applied with some qualifications where the arbitration agreement at issue is governed by the Federal Arbitration Act (FAA), which is codified at 9 U.S.C.A. §§ 1 to 307 (West 1999 & Supp. 2000). *See First* (continued…)

First Options of Chicago, Inc. v. Kaplan, 115 S. Ct. 1920, 1924 (1995); *Floss v. Ryan's Family Steak Houses, Inc.*, 211 F.3d 306, 314 (6th Cir. 2000); *Johnson v. Circuit City Stores*, 148 F.3d 373, 377 (4th Cir. 1998); *American Express Fin. Advisors, Inc. v. Makarewicz*, 122 F.3d 936, 940 (11th Cir. 1997).

Tennessee law applies in this matter. *See Vantage Tech., LLC v. Cross*, 17 S.W.3d 637, 650 (Tenn. Ct. App. 1999), *appeal denied*, (Tenn. Ct. App. 1999) ("[A] contract is presumed to be governed by the law of the jurisdiction in which it was executed absent a contrary intent.") (citing *Ohio Cas. Ins. Co. v. Travelers Indem. Co.*, 493 S.W.2d 465, 467 (Tenn. 1973) ("'[R]ights and obligations under a contract are governed by the law of that state with the view to which it is made and that the intentions of the parties in this respect [are] to be gathered from the terms of the instruments and all of the attending circumstances control.'") (quoting *First Nat'l Bank of Nashville v. Automobile Ins. Co.*, 252 F.2d 62 (6th Cir. 1958))).

The Debtor argues that only those disputes regarding the Lease which arise under the Sublease are arbitrable under its agreement with CROET. Paragraph 9 of the Sublease provides that "any dispute arising under this Sublease shall be subject to the Dispute Clause, Condition No. 27, of the Lease." Paragraph 27 of the Lease, however, provides that "any dispute concerning

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[4](…continued)
Options of Chicago, Inc., 115 S. Ct. at 1924; *Smith Barney, Inc. v. Sarver*, 108 F.3d 92, 96 n.4 (6th Cir. 1997). Those qualifications are made in keeping with the broad federal policy favoring arbitration, as evidenced in the FAA. *See First Options of Chicago, Inc.*, 115 S. Ct. at 1924; *Smith Barney, Inc.*, 108 F.3d at 96 n.4. This matter is not governed by the FAA which is limited in scope to arbitration provisions connected to maritime transactions and transactions involving interstate or international commerce. *See* 9 U.S.C.A. §§ 1, 2. Thus, the agreement is not subject to the federal policy favoring arbitration and the qualifications of state contract law that implement the policy. *See Gray v. Toshiba Am. Consumer Prods., Inc.*, 959 F. Supp. 805, 811 (M.D. Tenn. 1997) (citing *Gilmer v. Interstate/Johnson Lane Corp.*, 111 S. Ct. 1647, 1657 (1991)); *Bynes v. Ahrenkiel Ship Management (U.S.), Inc.*, 944 F. Supp. 485, 487 (W.D. La. 1996); *Central States, Southeast and Southwest Areas Pension Fund v. Goggin Truck Line, Inc.*, 140 F.R.D. 362, 364 n.3 (N.D. Ill. 1991), *reconsideration denied*, No. 90 C 4107, 1992 WL 81323 (N.D. Ill. Apr. 16, 1992).

a question of fact arising under this Lease shall be decided by the DOE Realty Officer . . . ." Thus, the Debtor argues, all disputes arising under the Sublease are subject to the terms of paragraph 27 of the Lease, but paragraph 27 requires the arbitration of only those issues arising under the Lease. It points out that its causes of action in this matter, against CROET under the Sublease and regarding the equipment, do not arise under the Lease. Thus, the Debtor concludes, those causes of action are beyond the scope of issues required to be arbitrated under paragraph 27 of the Lease as incorporated under paragraph 9 of the Sublease. Finally, the Debtor argues that, at best, paragraph 9 of the Sublease is ambiguous, in which case it must be construed against CROET, its drafter.

Tennessee law controlling the interpretation of contracts has been explained as follows:

> Courts are to interpret and enforce the contract as written, according to its plain terms. We are precluded from making new contracts for the parties by adding or deleting provisions. When clear contract language reveals the intent of the parties, there is no need to apply rules of construction. An ambiguity does not arise in a contract merely because the parties may differ as to interpretation of certain of its provisions. A contract is ambiguous only when it is of uncertain meaning and may fairly be understood in more ways than one; a strained construction may not be placed on the language used to find an ambiguity where none exists. We are to consider the agreement as a whole in determining whether the meaning of the contract is clear or ambiguous. If a contract is plain and unambiguous, the meaning thereof is a question of law for the court.

Warren v. Metropolitan Gov't of Nashville and Davidson County, 955 S.W.2d 618, 622-23 (Tenn. Ct. App. 1997) (citations omitted); *see also Bradson Mercantile, Inc. v. Crabtree*, 1 S.W.3d 648, 652 (Tenn. Ct. App. 1999) ("If the language of a written instrument is unambiguous, the Court must interpret it as written rather than according to the unexpressed intention of one of the

parties.")*; Hillsboro Plaza Enters. v. Moon*, 860 S.W.2d 45, 47-8 (Tenn. Ct. App. 1993) ("[T]he courts should avoid strained constructions that create ambiguities where none actually exist.").

The court finds that the Debtor's argument is well taken. Paragraph 9 of the Sublease does not require the arbitration of disputes arising under the Sublease. Instead, it simply makes paragraph 27 of the Lease applicable to disputes under the Sublease. The plain language of paragraph 27 of the Lease includes an agreement to arbitrate issues "arising under [the] Lease" and mentions no other issues. Nothing in paragraph 9 of the Sublease or paragraph 27 of the Lease suggests that any other disputes must be resolved through arbitration. The court finds no ambiguity there.

The causes of action asserted by the Debtor do not arise under the Lease and, therefore, the Debtor has not agreed to arbitrate them. The court may not compel arbitration of the Debtor's claims asserted against CROET through this adversary proceeding.

Even if the court did find an ambiguity in paragraph 9 of the Sublease, the outcome would not change. Ambiguities in a contract must be construed against its drafter. *See Vantage Tech., LLC*, 17 S.W.3d at 650.[5] Here the drafter is CROET, the party seeking arbitration.

[5] One qualification of the application of state contract law principles to arbitration agreements governed by the FAA relates to the treatment of ambiguous contract terms. *See First Options of Chicago, Inc.*, 115 S. Ct. at 1924; *Smith Barney, Inc.*, 108 F.3d at 96 n.4. That qualification is a presumption in favor of arbitration when construing contracts. *See First Options of Chicago, Inc.*, 115 S. Ct. at 1924; *Smith Barney, Inc.*, 108 F.3d at 96 n.4. Thus, ambiguities in contracts governed by the FAA are construed in favor of arbitration rather than against the drafter. *See First Options of Chicago, Inc.*, 115 S. Ct. at 1924; *Smith Barney, Inc.*, 108 F.3d at 96 n.4. This presumption regarding ambiguities does not apply to the arbitration agreements at issue here because they fall outside the scope of the FAA. *See supra* note 4, at 6.

The Debtor and CROET did not agree to arbitrate the causes of action asserted in this adversary proceeding when they executed the Sublease. Accordingly, the court may not compel the parties to arbitrate the issues under paragraph 27 of the Lease between the Department of Energy and CROET.

III

CROET also requests that the court abstain from hearing this adversary proceeding. This court dealt at length with the issue of abstention not long ago in *Beneficial Nat'l Bank USA v. Best Receptions Sys., Inc. (In re Best Receptions Sys., Inc.)*, 220 B.R. 932 (Bankr. E.D. Tenn. 1998).

A court may abstain from hearing an adversary proceeding on a mandatory or permissive basis. *See Best Receptions Sys., Inc.*, 220 B.R. at 942-56. Mandatory abstention is required under the following circumstances:

> "[F]or mandatory abstention to apply to a particular proceeding, there must be a timely motion by a party to that proceeding, and the proceeding must: (1) be based on a state law claim or cause of action; (2) lack a federal jurisdictional basis absent the bankruptcy; (3) be commenced in a state forum of appropriate jurisdiction; (4) be capable of timely adjudication; and (5) be a non-core proceeding."

Id. at 942 (quoting *Lindsey v. Dow Chemical Co. (In re Dow Corning Corp.)*, 113 F.3d 565, 570 (6th Cir. 1997), *cert. denied*, 118 S. Ct. 435 (1997)). Because the proceeding at issue was not brought in a state forum, the court may conclude that mandatory abstention is not required in this matter without reaching the other four requirements.

Bankruptcy courts have statutory authority to permissively abstain from hearing a proceeding pursuant to 28 U.S.C.A. § 1334(c)(1) (West Supp. 2000), which provides:

> Nothing in this section prevents a district court in the interest of justice, or in the interest of comity with State courts or respect for State law, from abstaining from hearing a particular proceeding arising under title 11 or arising in or related to a case under title 11.

The parties' arguments regarding abstention are centered almost exclusively on the question of whether the matter is a core proceeding. Although the analysis for determining whether to abstain from hearing a proceeding under § 1334(c)(1) encompasses many factors, *see Best Receptions Sys., Inc.*, 220 B.R. at 953, the court will first address the issue of whether the Debtor's action is a core proceeding. This analysis must begin with an overview of the jurisdiction over bankruptcy matters. *See id*. at 942.

The scope of the district courts' jurisdiction over bankruptcy matters is governed by 28 U.S.C.A. § 1334(a) and (b) (West 1993), which provide:

> (a) Except as provided in subsection (b) of this section, the district court shall have original and exclusive jurisdiction of all cases under title 11.
>
> (b) Notwithstanding any Act of Congress that confers exclusive jurisdiction on a court or courts other than the district courts, the district courts shall have original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11.

Thus, district courts have jurisdiction over four types of bankruptcy matters pursuant to § 1334(a) and (b): (1) "cases under title 11," which refers to the bankruptcy cases commenced by the filing of a bankruptcy petition; (2) "proceedings arising under title 11," which refers to proceedings involving a cause of action that originates in or is determined by a provision of title 11; (3) "proceedings . . . arising in . . . cases under title 11," which refers to matters, including administrative matters, which are not grounded in any right specifically created under title 11, but

which would not exist outside of the bankruptcy; and (4) "proceedings . . . related to cases under title 11," which refers to matters in which the outcome will effect the bankruptcy estate. *See Best Receptions Sys., Inc.*, 220 B.R. at 942-44.

The jurisdiction of bankruptcy judges, which is more limited in scope than that conferred on district court judges, is delineated by 28 U.S.C.A. § 157(b) (West 1993), which provides that "bankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may also enter appropriate orders and judgments . . . ." Although "core proceeding" is not defined by statute, the concept is illustrated by the nonexclusive list of core proceedings set forth in § 157(b)(2):

> Core proceedings include, but are not limited to—
>
> > (A) matters concerning the administration of the estate;
> >
> > (B) allowance or disallowance of claims against the estate or exemptions from property of the estate, and estimation of claims or interests for the purposes of confirming a plan under chapter 11, 12, or 13 of title 11 but not the liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11;
> >
> > (C) counterclaims by the estate against persons filing claims against the estate;
> >
> > (D) orders in respect to obtaining credit;
> >
> > (E) orders to turn over property of the estate;
> >
> > (F) proceedings to determine, avoid, or recover preferences;
> >
> > (G) motions to terminate, annul, or modify the automatic stay;
> >
> > (H) proceedings to determine, avoid, or recover fraudulent conveyances;

> (I) determinations as to the dischargeability of particular debts;
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> (J) objections to discharges;
>
> (K) determinations of the validity, extent, or priority of liens;
>
> (L) confirmations of plans;
>
> (M) orders approving the use or lease of property, including the use of cash collateral;
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> (N) orders approving the sale of property other than property resulting from claims brought by the estate against persons who have not filed claims against the estate; and
>
> (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims.

28 U.S.C.A. § 157(b)(2).

The adversary proceeding before the court is independent of the Debtor's bankruptcy case and therefore it does not arise under title 11. The Debtor asserts on two grounds that the adversary proceeding is a core proceeding arising under title 11 or arising in a case under title 11. First, it argues that it is a core proceeding under 28 U.S.C.A. § 157(b)(2)(M), which refers to "orders approving the use or lease of property, including the use of cash collateral." The Debtor's adversary proceeding does not involve the use of cash collateral or the use or lease of other property of the estate and is not a core proceeding of the type described in § 157(b)(2)(M).

Second, the Debtor argues that the adversary proceeding is a core proceeding because it involves a postpetition breach of contract and that postpetition breaches of contracts with a debtor are core proceedings. In support, the Debtor cites the opinion of the bankruptcy court in *In re*

United States Lines, Inc., 169 B.R. 804, 824 (Bankr. S.D.N.Y. 1994), in a matter that was eventually heard by the Second Circuit and decided in *In re United States Lines, Inc.*, 197 F.3d 631 (2d Cir. 1999), *cert. denied*, 120 S. Ct. 1532 (2000). The Second Circuit addressed the analysis for determining whether a proceeding based upon a contract is a core proceeding:

> [W]hether a contract proceeding is core depends on (1) whether the contract is antecedent to the reorganization petition; and (2) the degree to which the proceeding is independent of the reorganization. The latter inquiry hinges on "the nature of the proceeding." Proceedings can be core by virtue of their nature if either (1) the type of proceeding is unique to or uniquely affected by the bankruptcy proceedings, (claim allowance), or (2) the proceedings directly affect a core bankruptcy function, (contractual subordination agreements affecting priority of claims).
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> . . . .
>
> . . . However, the critical question in determining whether a contractual dispute is core by virtue of timing is not whether the cause of action accrued post-petition, but whether the contract was formed post-petition. The bankruptcy court has core jurisdiction over claims arising from a contract formed post-petition under § 157(b)(2)(A). But a dispute arising from a pre-petition contract will usually not be rendered core simply because the cause of action could only arise post-petition. In *Orion*, for example, we held to be non-core Orion's cause of action for anticipatory breach of a pre-petition contract that sought declaratory and other relief from Showtime even though the event that triggered Orion's claim occurred post-petition.

United States Lines, Inc., 197 F.3d at 637-38 (citing *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1102 (2d Cir.1993) (emphasis omitted)). Thus, the Second Circuit's opinion does not stand for the proposition that an action involving the postpetition *breach* of a contract is a core proceeding. Rather, the opinion directs courts to consider whether the contract was *formed* prepetition or postpetition. *See id.*

The contract at issue in the Debtor's adversary proceeding is a prepetition Sublease. The proceeding is completely independent of the Debtor's reorganization. It is in no way unique to or

uniquely affected by the bankruptcy proceedings and does not directly affect a core bankruptcy function. The timing of the alleged breach of the Sublease does not render the action a core proceeding because the Sublease is a prepetition contract. Further, although the Debtor characterizes the breach as a prepetition breach continuing postpetition, the alleged breach of that contract occurred well before the Debtor's bankruptcy. Under the law as stated by the Second Circuit in *United States Lines, Inc.*, this action is not a core proceeding.

Further, in *Best Reception Systems, Inc.*, this court had to determine whether to abstain from hearing multiple adversary proceedings based upon state law theories of, among other things, misrepresentation and negligence. *See Best Receptions Sys., Inc.*, 220 B.R. at 946. The court concluded that "[a]t best, these actions will be deemed to 'arise under' title 11 only if they constitute part of the claims resolution process." *Id.* (footnote omitted). It explained that the actions would constitute part of the claims resolution process if brought *against* the debtor by a party who had filed a claim in the debtor's case and if that action sought "recovery on the same grounds as those serving as the basis for the proof of claim." *Id.* at n.20.

The adversary proceeding at issue here is not part of the process for resolving claims against the Debtor. Rather, it is an action brought by the Debtor against CROET based on the Sublease and the parties' agreement regarding the lease of certain equipment. The Debtor's action is not a core proceeding.

A bankruptcy court may hear a non-core proceeding "if it 'is otherwise related to a case under title 11.'" *Id*. at 944. The Sixth Circuit has adopted the following test for determining whether a proceeding is related to a case under title 11:

> "The usual articulation of the test for determining whether a civil proceeding is related to bankruptcy is whether *the outcome of the proceeding could conceivably have any effect on the estate being administered in bankruptcy*. Thus, the proceeding need not necessarily be against the debtor or against the debtor's property. An action is related to bankruptcy if the outcome could alter the debtor's rights, liabilities, options, or freedom of action (either positively or negatively) and which in any way impacts upon the handling and administration of the bankrupt estate."

Robinson v. Michigan Consol. Gas Co., Inc., 918 F.2d 579, 583 (6th Cir. 1990) (quoting and adopting the test set forth in *Pacor, Inc. v. Higgins (In re Pacor, Inc.)*, 743 F.2d 984, 994 (3rd Cir. 1984)); *see also Lindsey v. O'Brien, Tanski, Tanzer and Young Health Care Providers of Connecticut (In re Dow Corning Corp.)*, 86 F.3d 482, 489 (6th Cir. 1996) (citing the *Pacor* test); *Best Receptions Sys., Inc.*, 220 B.R. at 944 (same). The standard for relatedness is "'comprehensive' but not 'limitless.'" *Best Receptions Sys., Inc.*, 220 B.R. at 944 (quoting *Celotex Corp. v. Edwards*, 115 S. Ct. 1493, 1499 (1995)). "There must be some nexus between the action and the debtor's bankruptcy case." *Id*. (citing *Dow Corning Corp.*, 86 F.3d at 489).

The proceeding at issue here was brought by the Debtor. It seeks monetary damages and specific performance of the Sublease and its understanding with CROET for the lease of machinery and equipment. The bankruptcy estate will be affected by the outcome of the Debtor's action in that a recovery of monetary damages would increase the size of the estate. The Debtor's reorganization will also be affected by the outcome of the action. If the Debtor prevails and is awarded specific performance, it will be able to reorganize its business in the same location and

will gain access to the machinery and equipment that it needs to operate its business. The Debtor's action is within the court's jurisdiction over proceedings that are related to a case under title 11.

Because the Debtor's action is not a core proceeding but is within this court's jurisdiction over proceedings related to the Debtor's bankruptcy case, this court may hear the proceeding but may not enter a final judgment in the matter absent the consent of the parties. *See* 28 U.S.C.A. § 157(c)(1), (2) (West 1993); *see also Best Receptions Sys., Inc.*, 220 B.R. at 943; *In re G.T.L. Corp.*, 211 B.R. 241, 245-46 (Bankr. N.D. Ohio 1997). Without such consent, this court can only enter proposed findings of fact and conclusions of law with respect to this non-core proceeding if the court denies CROET's motion to abstain from hearing the proceeding. *See* 28 U.S.C.A. § 157(c)(1), (2); *In re G.T.L. Corp.*, 211 B.R. at 245-46.

IV

When determining whether to permissively abstain from hearing a proceeding, the court must consider several factors, including the core or non-core nature of the proceeding. *See Best Receptions Sys., Inc.*, 220 B.R. at 953. Courts commonly consider the following factors in determining whether permissive abstention is appropriate:

> (1) the effect or lack thereof on the efficient administration of the estate if a court recommends abstention; (2) the extent to which state law issues predominate over bankruptcy issues; (3) the difficulty or unsettled nature of the applicable law; (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court; (5) the jurisdictional basis, if any, other than 28 U.S.C.A. § 1334; (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case; (7) the substance rather than form of an asserted core proceeding; (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court; (9) the burden of the bankruptcy court's docket; (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties; (11) the existence of a right to a jury trial; and (12) the presence in the proceeding of non-debtor parties.

Id. (citing the decisions of numerous courts employing the factors).

As previously discussed, the Debtor's adversary proceeding is a non-core related proceeding that involves state law causes of action. In addition, there is no jurisdictional basis for hearing this proceeding other than § 1334.[6] Those facts tend to weigh in favor of abstention.

[6] A federal district court has original jurisdiction over civil actions involving a federal question of law pursuant to 28 U.S.C.A. § 1331 (West 1993), and over civil actions between citizens of different states in which the amount in controversy exceeds $75,000.00 pursuant to 28 U.S.C.A. § 1332(a) (West 1993 & Supp. 2000). A corporation is deemed to be a citizen of the state in which it has its principal place of business. *See* 28 U.S.C.A. § 1332(c) (West 1993). There is no federal question at issue in the Debtor's action and thus no jurisdiction under § 1332(a). Further, as CROET is a Tennessee corporation and the Debtor admits that its principal place of business is Tennessee, there is no diversity of citizenship upon which to base jurisdiction under § 1332(c).

There are several factors, however, that weigh in favor of this court hearing the proceeding. The Debtor had not commenced an action in any other court to pursue these causes of action. There is no indication that the applicable law is difficult or unsettled in nature; that hearing the proceeding will burden this court's docket; or that a party has engaged in forum shopping. In addition, the court believes that hearing the proceeding in this court will promote a more efficient administration of the estate. Finally, the court finds significant the degree of relatedness of this proceeding to the main bankruptcy case. If the Debtor is successful in its action, the recovery of a money judgment would augment the estate and an award of specific performance may enable the Debtor to use the leased premises and equipment at issue in order to operate at a higher capacity.

Having considered the foregoing factors, the court concludes that permissive abstention is not appropriate in the circumstances before it.

V

In summary, the court finds that it cannot compel the arbitration of the causes of action asserted by the Debtor in this adversary proceeding because they are not within the scope of the arbitration provision of the Sublease between the Debtor and CROET or the Lease between CROET and the Department of Energy, as incorporated by the Sublease. In addition, the court finds it is not appropriate for it to abstain from hearing this proceeding. CROET's Motion Requesting the Federal Court to Abstain From Hearing This Action and Enforce the Dispute

Resolution Clause of the Sublease and its Motion to Dismiss for Lack of Subject Matter Jurisdiction will be denied.

An order consistent with this Memorandum will be entered.

FILED: September 1, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE

IN THE UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF TENNESSEE

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Defendant

O R D E R

For the reasons set forth in the Memorandum on Defendant's Motion to Abstain and to Enforce Dispute Resolution Clause filed this date, the court directs that the Motion Requesting the Federal Court to Abstain From Hearing This Action and Enforce the Dispute Resolution Clause of the Sublease filed by the Defendant on June 23, 2000, and the Motion to Dismiss for Lack of Subject Matter Jurisdiction filed by the Defendant on August 24, 2000, are DENIED.

SO ORDERED.

ENTER: September 1, 2000

BY THE COURT

/s/ Richard Stair, Jr.

RICHARD STAIR, JR.
UNITED STATES BANKRUPTCY JUDGE